

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

PAUL GOLDMAN,
Pro se Plaintiff,

v.

Civil No. 3:21-cv-420 (DJN)

RALPH NORTHAM, *et al.*,
Defendants.

ORDER

**(Granting in Part and Denying in Part Defendants' Motion to Dismiss
the Second Amended Complaint and Setting Deadlines)**

Pro se Plaintiff Paul Goldman ("Plaintiff") brings this action against Defendants Ralph Northam ("Governor Northam"), the Virginia State Board of Elections ("the Board"), Robert Brink ("Brink"), John O'Bannon ("O'Bannon"), Jamilah D. LeCruise ("LeCruise") and Christopher Piper ("Piper") (collectively, "Defendants"), alleging violations of Article II, §§ 6 and 6-A of the Constitution of Virginia and of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. This matter now comes before the Court on Defendants' Motion to Dismiss the Second Amended Complaint (ECF No. 23). For the reasons set forth in the accompanying Memorandum Opinion (ECF No. 40), the Court hereby GRANTS IN PART and DENIES IN PART the Motion to Dismiss.

Further, for the reasons discussed at the hearing on October 12, 2021, the Court hereby ORDERS the following.

1. By October 18, 2021, the remaining Defendants shall notify the Court in a filed pleading whether they are appealing the Court's ruling on sovereign immunity. Should the remaining Defendants file a notice of appeal, the Court will immediately stay all proceedings in

this case. Should the remaining Defendants notify the Court that no appeal will be taken on the issue of sovereign immunity, the following schedule will apply, subject to modification by the Court as necessary.

2. By October 19, 2021, the parties shall file a stipulation of facts as it relates to standing, providing sufficient factual basis to allow the Court to address whether Plaintiff has standing to pursue his Equal Protection Clause claim.

3. By October 22, 2021, the remaining Defendants shall file a renewed Motion to Dismiss, which shall include arguments challenging Plaintiff's standing to bring this action, or a statement on whether they concede that Plaintiff has standing.

4. By October 29, 2021, Plaintiff shall respond to the remaining Defendants' Renewed Motion to Dismiss, if they file one. If the remaining Defendants challenge the Plaintiff's standing, the Plaintiff shall state in his response whether he believes that 28 U.S.C. § 2284 requires a three-judge panel to address the issue of standing or whether the undersigned alone can adjudicate this jurisdictional issue.

5. By October 29, 2021, any prospective intervenors who wish to intervene in this case must file a Motion to Intervene.

6. By November 4, 2021, Defendants shall file their Reply, if any, to Plaintiff's Response to their Renewed Motion to Dismiss, as well as their Answer to the Second Amended Complaint (ECF No. 18). Additionally, if any prospective intervenors move to intervene, Defendants may also respond to those Motions to Intervene and address the prospective intervenors' standing by this date. Should the remaining Defendants challenge Plaintiff's standing to bring this case, the remaining Defendants shall also state in their reply whether they

believe that 28 U.S.C. § 2284 requires a three-judge panel to address the issue of standing or whether the undersigned alone can adjudicate this jurisdictional issue.

Further, in light of the public reporting that state Delegate Lee J. Carter (“Carter”) requested that the Virginia Attorney General (“the Attorney General”) issue an opinion on the constitutionality of the 2021 general election (Defs.’ Resp. to Oct. 8, 2021 Order ¶ 1 (ECF No. 38)), the Court will give the Attorney General until November 4, 2021, to issue an opinion in response to Carter’s and any other similar request that he may have received, *if the Attorney General so chooses*. If the Attorney General elects to issue an opinion on this matter by that date, the remaining Defendants shall also file a pleading as to the impact of that opinion on this case by November 4, 2021.

7. On November 8, 2021, at 11 a.m., the Court will conduct a hearing on the remaining Defendants’ Renewed Motion to Dismiss, and in particular, the issue of standing. Should the Court determine that 28 U.S.C. § 2284 requires a three-judge panel to address the issue of standing, the Court will notify the parties before November 8, 2021, and advise the parties as to whether this schedule must be modified to accommodate the need for the three-judge panel.

If the Court finds standing to exist, the following schedule will apply:

8. By November 15, 2021, the parties shall each file cross-motions for summary judgment.

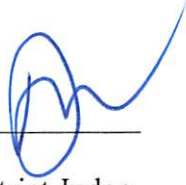
9. By November 22, 2021, the parties shall respond to each other’s cross-motions for summary judgment.

10. Finally, the Court hereby tentatively SCHEDULES a hearing before a three-judge panel on the cross-motions for summary judgment on December 3, 2021, at 10 a.m., subject to

the availability of the two other panel members.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.



/s/
David J. Novak
United States District Judge

Richmond, Virginia

Date: October 12, 2021